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C O N F I D E N T I A L SECTION 01 OF 02 TAIPEI 003953

SIPDIS

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TAGS: [KIPR](#) [ECON](#) [TW](#) [IPR](#)

SUBJECT: SPECIAL 301 OCR: WHY WATCH LIST MOVES US FORWARD

REF: A. TAIPEI 3093

[1](#)B. TAIPEI 3690

Classified By: AIT/T Deputy Director David Keegan, Reason 1.4b

[1](#)1. (C) Summary: AIT/T supports downgrading Taiwan from the Priority Watch List to the Watch List in the current out of cycle review. Doing so will reinforce Taiwan's reorientation towards protecting intellectual property and provide a timely public relations victory for advocates of strong IPR protection within the government. Failure to move Taiwan from the PWL to the WL will devalue the 301 process in the eyes of Taiwan officials and will not lead to improved protection of intellectual property, including pharmaceutical data. With legislative elections held December 11 and a new cabinet expected to be named early in 2005, those officials who have been most committed to IP protection risk losing credibility at a time when changes in personnel are being actively considered. End Summary.

[1](#)2. (C) Taiwan's improved record of intellectual property (IP) protection over the past year plus is incontrovertible. From stepped up enforcement actions targeting optical media piracy and counterfeit pharmaceuticals, to changes in the law that provide greater protection for copyrighted works and stiffer penalties for those involved in the manufacture, transport and sale of bogus medicines, Taiwan authorities have consistently taken actions designed to improve the environment for IP in Taiwan. Much work remains to be done: the judicial process continues to be slow and decisions uneven, illicit copying on campus continues, Taiwan is struggling to control internet piracy and a bill to protect pharmaceutical data has not yet been passed by the Legislative Yuan (LY). However, Taiwan authorities are taking measures to address all of these concerns. The government is conducting regular IP training for judges and prosecutors and establishing a specialized IP court. Further, they are working with industry to increase both IP education and enforcement on campuses, pressing cases against internet pirates Kuro and EZPeer in the courts, and vowing to push for speedy passage of Data Exclusivity (DE) legislation in the LY.

[1](#)3. (C) More and more, government and industry leaders are telling AIT that strong IP protection is in the best interests of Taiwan's consumers and necessary for Taiwan's continued economic development. Government officials and business leaders agree the future of Taiwan's economy will depend upon promoting innovative research and development, creating media content, and providing goods and services that rely on intellectual property. These same leaders still care about Taiwan's Special 301 ranking and see in it international acknowledgment of their efforts. Failure to recognize the obvious improvement in Taiwan's intellectual property climate is not likely to turn Taiwan from its current pro-IP path in the long term, but will have the unintended effect of damaging the credibility of those who have argued that Taiwan needs to improve its IP protection regime to combat its international reputation as a haven for pirates. In addition, the credibility of the Special 301 process will be strengthened by a decision to downgrade Taiwan to the Watch List. Taiwan authorities are more likely to continue to be motivated by the Special 301 annual review if they believe their positive actions will be recognized.

[1](#)4. (C) Data Exclusivity is a key point of contention in the discussion of Taiwan's Special 301 status. Industry argues that Taiwan's failure to pass a DE bill during the current LY session betrays a lack of commitment to data protection and Taiwan should remain on the PWL as an inducement to passing this important legislation. DE is clearly a WTO TRIPS obligation, a position Taiwan's Ministry of Health has been slow to accept. Taiwan's influential domestic pharmaceutical industry has strongly opposed DE protection since the issue was brought to the fore in late 2003. In spite of bureaucratic intransigence and the opposition of local industry, the Taiwan government drafted and submitted to an LY preoccupied with a controversial military budget and upcoming elections a bill that addresses most of the concerns of the international research pharmaceutical industry. During Trade and Investment Framework Agreement (TIFA) talks held in Washington November 29-30, Taiwan officials,

including Deputy Minister of Economic Affairs Steve Chen, clarified questionable terms to the general approval of representatives from USPTO and committed the Taiwan government to push for passage of the bill after December 11 elections and, if needed, re-submission of the bill to the next Legislative Yuan in February 2005.

15. (C) Taiwan's Special 301 status will not significantly influence the government in its decision whether to lobby strongly for early passage of the DE bill. The bill originates from the Department of Health, which is primarily motivated by perceptions of public safety and consumer benefit. They have moved this bill forward despite the opposition of local industry because the Taiwan leadership is seeking to improve the US/Taiwan trade relationship in pursuit of a Free Trade Agreement. The leadership justifies their support of the bill to local industry by pointing to the potential benefits for the development of Taiwan's own research pharmaceutical industry. The DOH is not motivated by international perceptions of Taiwan's intellectual property regime. Conditioning Taiwan's 301 status on the passage of the DE bill by the date of the regular cycle review is unlikely to prove a successful strategy. Not only is DOH relatively unconcerned about PWL/WL status, but the installation of the new LY in February means there is realistically very little time for consideration of the bill before an April deadline for the 301 decision.

16. (C) Our goal must be to promote continued improvements in Taiwan's IPR environment. That objective is best accomplished by recognizing Taiwan's efforts since the last 301 review to pass amendments to the copyright law that are acceptable to US stakeholders, institutionalize enforcement efforts, and continue to expand training and education for students, judges, and prosecutors. Not to do so risks the standing of some of the strongest supporters of intellectual property protection in the government at a time when cabinet and senior level positions are likely to change, risks the credibility of the 301 process, and is not likely to enhance efforts to protect IPR.
PAAL